

IN THE
COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

Civ. No. B 025920
(Super. Ct. No. C420153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD,

Intervenor-Plaintiff-Appellant,

- against -

GERALD ARMSTRONG,

Defendant-Respondent,

ON APPEAL FROM SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
JUDGE PAUL G. BRECKENRIDGE, JR.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Plaintiffs-Appellants Church of Scientology of California and Mary Sue Hubbard hereby petition for rehearing of this Court's decision and judgment of July 29, 1991. With due respect, appellants submit that this Court committed serious factual and legal errors, which, if corrected, would require reversal of the underlying judgment on this case. Appellants request that the Court set the case down for reargument.

I. Factual Errors

Fundamental to this Court's decision is its statement that Armstrong delivered the documents to his attorney Michael Flynn because of his purported fear for his safety and to defend himself against possible lawsuits. Slip op. at 9-10. Indeed, the Court has overlooked uncontroverted evidence out of Armstrong's own mouth which demonstrates: (1) that Armstrong gave the documents to Flynn for other reasons; (2) that Armstrong gave the documents to numerous third persons; (3) that Armstrong did so secretly and over a period of months, thus negating any claim that he did so to prevent an imminent physical assault; (4) that Armstrong converted the documents and intruded on privacy rights before the events cited by this Court as the precipitating reasons for his actions.

The Court has overlooked the facts as proven at trial that Armstrong was only sued because he stole the documents. Armstrong was suspected of stealing documents and refused a security check. Instead, in November, 1981, Armstrong assured his superiors that he was guiltless (R.T. 1655). Thereafter, Armstrong left, having secretly taken thousands of pages of

documents. The Church proved at trial that Armstrong began taking documents at least as early as December, 1981. On December 12, 1981, Armstrong took with him over 3,000 pages of original material, which he did not prepare for Garrison. (R.T. 745-747). Armstrong was expelled from the Church and declared a suppressive person because he stole the documents. Armstrong learned of the first declare in April, 1982 (R.T. 1699) and of the second declare in late May (R.T. 2586). Those declares plainly had nothing to do with his motivation for taking the documents. In August of 1982, Armstrong was sued because he had stolen the documents.

In summary, virtually all of the alleged Church acts cited as justification for Armstrong's theft, in addition to being exaggerated and distorted, were done in order to lawfully deal with the fact of theft by Armstrong. Judge Breckenridge's findings, and this Court's summary of those findings, are altered in sequence to make it appear as if the Church in a vacuum set out to cause trouble for Armstrong. Every one of those acts that did in fact occur, were clearly in furtherance of an attempt to legally and peacefully seek a return of the documents that Armstrong had stolen. If the Court would verify the facts as set forth herein, it will see that Judge Breckenridge's findings resemble an Alice in Wonderland distortion of reality to fit an obvious pre-determined end; to wit, Armstrong's exoneration despite the facts.

A. Armstrong himself testified that his purpose in obtaining documents from Garrison was to turn them over to Flynn for use in other litigation that Flynn had against the

Church; this is exactly what Armstrong then did between May and August 1982. (R.T. 4579, 764-65, 771-72, 758-764). Clearly, had Armstrong contemplated an immediate physical attack in December 1981, when he first took thousands of pages of original and copied documents, or in May 1981 when he showed Flynn and others the documents at the Bonaventure Hotel, or throughout the spring and summer of 1981 when he sent Flynn the documents on the installment plan, and had Armstrong truly believed that his conversions and intrusions upon privacy were necessary to prevent such an attack, he would have acted with far greater speed. In fact, Armstrong did not testify and presented no evidence that he feared an imminent physical attack, let alone that such a fear was reasonable.

B. Armstrong further conceded that he also permitted several other individuals hostile to the Church to examine the materials. (R.T. 764-65, 768-69, 797). Clearly, this act had nothing to do with self-protection.

C. It is uncontroverted and conceded by Armstrong that he not only did not inform the Church that he had taken originals and copies of documents and turned them over to Flynn and others, but that he did so secretly and denied having done so. (R.T. 1147, 1149; Exs. 17, 18, 19). It thus would not have been possible for Armstrong to use his improper dominion over the documents as a means, through threats of disclosure or otherwise, to prevent an imminent assault or lawsuit, had he feared either. Neither Armstrong nor this Court attempt to explain how Armstrong's acts in taking the documents and secretly giving them to Flynn and others on the installment

plan even remotely was calculated to prevent such purported eventualities.

D. Armstrong admitted that at the time he took the documents and showed them to Flynn and others, he knew of no then-pending or planned lawsuit against him to which the documents would be relevant. (R.T. 2371).

E. Armstrong testified that at the time of his taking and misuse of the documents, they were in the custody and care of his close friend and confidant Omar Garrison, who kept duplicate copies at two separate locations to ensure their safekeeping. (R.T. 1748, 3607). This Court evidently overlooked this testimony when it stated that Garrison was afraid his house might be burglarized (which, of course, it was not).

F. This Court improperly suggests that Armstrong was coerced to undergo a "security check" in November 1981. In fact, Armstrong declined to participate in the security check; instead, he participated in a wholly benign meeting, at which Armstrong explained his conduct. (R.T. 1655). Moreover, the Court improperly suggests something nefarious about security checks, which are Church confessionals designated to "enhanc[e] somebody spiritually" by releasing "transgressions against moral codes." (R.T. 3502). Armstrong had participated voluntarily in many such confessionals throughout his involvement with the Scientology religion without ever feeling he was under attack. (R.T. 1490).

G. The Court suggests that the two "suppressive person declares" caused Armstrong to fear for his safety and helped to

justify his actions. Armstrong himself testified that he did not even learn of the first declare until April, 1982 (R.T. 1699) or of the second declare until late May (R.T. 2586); those declares plainly had nothing to do with his motivation for taking the documents. Indeed, Armstrong conceded that he did not learn of the second declare until after the Bona-venture Hotel meetings at which he showed the documents to Flynn and others and after seeing Garrison to acquire more documents. (R.T. 2386). See Appellants' Opening Brief at 16, n.17.

H. The Court states that Armstrong "knew that persons attempting to leave [the Church] were locked up, ... [etc.]," thereby strongly suggesting the truth of such a statement. This use of language parallels the improper use of language by the trial court in restating as true matters for which the only evidence concerned Armstrong's purported state of mind. It was, of course, far easier for Armstrong to "just allege"^{1/} his state of mind than to prove the underlying truth of the matters. In fact, there is no evidence in the record of the truth of the matters referred to above and the Court should not use language which confuses the issues. If the Court wishes to refer to Armstrong's purported state of mind, we respectfully request that it so indicate, rather than

1. Subsequent to this trial, in a videotaped meeting with a Scientologist whom Armstrong was attempting to induce to sue the Church, Armstrong stated that it was not necessary that allegations against the Church be true; it would be sufficient to "just allege" them. See discussion in our original opening brief at p. 12, line 11; App. 294. Armstrong knew the utility of these tactics from his experience in this case: all he had to do was "allege" his "state of mind," and such allegations became the "justification" for his tortious acts. And now, this Court has joined the trial court in setting forth these "state of mind" allegations as if they were gospel truth.

suggest the truth of the matter in an opinion designated for publication.

I. The same point applies to the Court's reference to the purported "fair game" policy. No evidence was admitted as to the truth of such a policy, yet this Court's language is phrased as if the matter were proven. "Fair Game" was never a "policy" of the Church; the use of the term was revoked in 1969 (Ex. AAAA, R.T. 3361-93 and passim). When it was used it was used in a colloquial fashion to indicate that a person declared "suppressive" -- equivalent to a declaration of excommunication -- could not invoke the Scientology-internal justice system to resolve a dispute against a Scientologist. (R.T. 4079-80). Thus, if a declared suppressive person and a Scientologist were involved in a dispute, the "suppressive person" could not seek redress within the Scientology justice system. He could, of course, take his chances with the secular courts of California.

The trial testimony was limited to Armstrong's alleged "state of mind" and the Church was attacked by Armstrong and Flynn presenting materials and arguments upon which they contended his state of mind was based. The trial court did not allow either these materials or this alleged state of mind to be disputed by a showing that the facts were otherwise than as Armstrong claimed. Had the Church been able to do this, it would have been clear that there was no credible foundation to his allegations. Armstrong's assertions of his belief in the existence of a "fair game" policy, for example, would have been unquestionably disproven by a showing that the entire emphasis of the ethics and justice policies of the Church as well as the teachings in the Church is

to increase honesty and raise standards of ethical behavior. The Declaration of Mark C. Rathbun, and its accompanying exhibits, is offered to the Court here as a proffer of the type of evidence which the Church would have introduced, had it been permitted to do so.

As Mr. Rathbun's declaration demonstrates, a policy of "fair game," construed as Armstrong claimed, would have been diametrically opposed to the overwhelming volume of scriptural writings of L. Ron Hubbard. As the Scientology scriptures appended to Mr. Rathbun's declaration demonstrate, the Scientology religion is based on honesty and truth. The basic precepts of the religion resound with the importance of ethical conduct. Against these facts, Armstrong's assertions are incredible on their face. Had the Church been permitted to introduce its evidence on this subject, the Court would then have had to search for other motives for Armstrong's assertions -- such as that only through prejudicial and inflammatory rhetoric could he overcome the clear fact that he simply stole documents and attempted to use them against the Church, thereby forcing the Church to litigate to recover the materials. The Church is entitled to due process from the California courts; it is not and cannot be subject to improper findings of fact based upon biased and unprovable or disprovable assertions of Armstrong's purported state of mind.

J. This Court's reference to the alleged incidents with "private investigators" is wholly irrelevant and gratuitous. Armstrong's own testimony indicated that he aggressively initiated and provoked the minor physical confrontations

referred to in the Court's opinion. (R.T. 1726, 1727-28, 2446, 2448, Ex. GGG). And there was no evidence that any Church investigator attempted to instigate a freeway accident with Armstrong.^{2/} Armstrong himself testified that he did not know or could not identify the mysterious person who allegedly braked in front of him, (R.T. 1731-1732) and obtained no proof that the person -- if he existed -- had anything at all to do with the Church. Moreover, Armstrong never produced or filed a police report of the alleged incident, which is not surprising considering the event which Armstrong describes -- if it indeed did occur -- sounds like a routine Los Angeles freeway incident, and which, if experienced only once in 11 years, is remarkable. Amazingly, Armstrong attempts to tie this incident to the Church. The only thing more amazing is the Court's acceptance of such frivolous allegations. As the Court recognizes, whatever occurred took place long after Armstrong's illegal actions, and cannot be used in an ex post facto fashion to justify those actions.

II. Legal Errors

This Court's legal analysis, and its application of legal principles to the facts at issue, is equally flawed. The Court fails to recognize the strictly defined and narrow defense of self-defense to the tort of conversion, and wholly ignores and/or misconceives the plaintiffs' claim of intrusion on privacy, confusing it with the tort of invasion of privacy by publication (which is not at issue here). The net effect of

2. Once again, it is easy for Armstrong to "just allege" such an incident; that is not proof that it occurred.

this Court's decision, unless it is modified upon this petition, will be to grant broad license to disaffected employees, business associates, clerks (including law clerks), family members and others unilaterally to seize, convert, and disclose highly confidential and private documents of any person or corporation on the subjective belief that it will serve their personal advantage or protect them from future alleged assaults or lawsuits. By such means the concept of "outlaw" would be reintroduced -- individuals, businesses, and private associations (including churches) indeed would become "fair game" to tortious acts by such disaffected individuals without meaningful recourse to judicial mechanisms and procedures. Such a result would remit those aggrieved by actions such as Armstrong's, to self-help measures thereby undermining respect for and compliance with the law.^{3/}

Once again, we emphasize that each tort must be separately analyzed. There are well defined elements of and defenses to the specific torts committed by Armstrong. A valid defense to one tort, if it exists, is not necessarily a valid defense to another.

A. The Conversion Claim

This Court quotes from the Restatement 2d of Torts, §§ 261 and 63, language making clear that one is justified to commit a conversion only where he would be justified to commit

3. This would not be the case, of course, if the rules of this case are meant to be applied only to the Church of Scientology. In that event, only the Church of Scientology would be "fair game." It is unthinkable, of course, that this Court would have intended such a result, which clearly violates due process, equal protection, and First Amendment guarantees.

a "harmful or offensive contact" in self-defense. Without further analysis or discussion, this Court then states that the defense was made out sufficiently in this case.

This Court totally ignores the clearly established law, reflected in the Restatement, in the writings of Prosser and Keeton, and in the cases which clearly define and limit the justification of self-defense to situations only where the defendant was faced with a present and immediate danger of physical injury. The defense is inapplicable if the apprehended danger is either past or lies in the indefinite future -- even the near future. The requirement of a present and immediate assault is rooted in the most fundamental rationale of the self-defense doctrine, which is well-summarized by Prosser and Keeton:

The privilege of self-defense rests upon the necessity of permitting a person who is attacked to take reasonable steps to prevent harm to himself or herself, where there is no time to resort to the law.

Prosser and Keeton, Torts (5th Ed. 1984) at 124 (emphasis added).

As stated in Restatement 2d of Torts § 261, the self-defense doctrine is a defense to conversion under the same conditions as it is a defense to assault.^{4/} Thus, as stated in Comment b to Section 261, the defense obtains only when there is reasonable apprehension of immediate "confinement or a harmful or offensive contact to the actor." Comment a to Section 261

4. Thus, this Court's statement that the self defense cases relied upon by the appellants "are inapposite to that at bench" (slip op. at 21, n.6), is manifestly incorrect. They are directly relevant, and indeed control this case.

refers to sections 63-76 for further elaboration of the doctrine of self-defense. Comment g to Section 63 states, in turn, that the privilege "extends only to acts which are done for the purpose of protecting the actor from a presently threatened aggression." (Emphasis added). Similarly, Comment k to Section 63 states that the privilege exists "only when the other actually apparently threatens an immediate attack upon" the defendant. (Emphasis added.) Comment k further states:

[T]here is no privilege to disarm another who threatens a future attack upon the actor or otherwise to disable him from carrying his purpose into effect, since there is always the chance that the other may abandon his purpose, and if he does not, that the actor will have an opportunity of repelling the attack when it becomes imminent.

The courts have uniformly followed the principles stated by Prosser and the Restatement. In the early case of Acers v. United States, 164 U.S. 388, 391 (1896), the Supreme Court upheld a jury charge on self-defense which instructed that the apprehended danger "could not be a past danger, or a danger of a future injury, but a present danger." This rule requiring a present and immediate danger of bodily injury has been consistently followed by the California courts.^{5/}

5. E.g., People v. Flannel, 25 Cal.3d 668, 676, 160 Cal.Rptr. 84 (1979) (must be reasonable belief "of imminent peril to life or great bodily harm"); People v. Shade, 185 Cal.App.3d 711, 230 Cal.Rptr. 70, (1986) (must have honest and reasonable fear of imminent danger and must have acted solely under influence of such fear); Villines v. Tomerlin, 206 Cal.App.2d 448, 452, 23 Cal.Rptr. 617 (1962) (must be reasonable belief "in an impending attack . . . or immediate damage to his property"); Boyer v. Waples, 206 Cal.App.2d 725, 727, 24 Cal.Rptr. 192 (1962) (act must be "necessary"); People v. Cornett, 93 Cal.App.2d 744, 209 P.2d 647, 650 (CA 4, 1949) (act must be so "urgent and pressing" as to be "necessary"); People v. Fitch, 28 Cal.App.2d 31, 44 (1938) (must be "immediate danger" of bodily harm). See (footnote continued)

The facts of this case, even as found by the trial court, establish at most that defendant feared for his safety at some indefinite future time. More particularly, defendant did not introduce a shred of evidence to prove that he apprehended present and immediate assault at the points in time pertinent to the conversion claims: in December 1981 when he took the documents from the Church; at the various points in the spring and summer of 1982 when he reacquired them from Mr. Garrison's storage; and in May 1982, when he failed to respond to the Church's demand letter. Indeed, the protracted and ongoing and SECRET nature of defendant's conversion itself definitively contradicts any claim that he took them to defend himself against a present assault at any given point in time. Certainly, he did not face incessant assailants over a period of several months. To the contrary, there is no evidence that he faced any assailants at any time during the period he converted the documents.

Moreover, even if defendant had introduced evidence showing a present and immediate assault, he introduced none to show that the means he employed were the only and necessary means of avoiding physical danger. Restatement 2d of

(footnote continued)

also People v. Lucas, 160 Cal.App.2d 305, 324 P.2d 933 (1958) (danger must be imminent, and a mere fear that danger will become imminent is not enough); State v. Schroeder, 103 Kan. 770, 176 P.2d 659, 660 (1918) (fear of injury "at some future time" does not justify act of self-defense, even where other party made threats immediately before the act and there were prior assaults "a few days before" the act). In what Prosser cites as an "excellent" review of the law of self-defense, the rule is affirmed: "The danger must be, or appear to be, pressing and urgent. A fear of danger at some future time is not sufficient." R.M. Perkins, Self-Defense Re-Examined, 1 UCLA L. Rev. 133, 134 (1954).

Torts, § 70, Comment b, states that the actor must correctly or reasonably "believe that the means which he applies are necessary to prevent the apprehended harm and not merely that they are likely to be effective in preventing it." (Emphasis added). See also People v. Clark, 130 Cal.App.3d 371, 377, 181 Cal.Rptr. 682, 686 (1982) (only an act "which is necessary in view of the nature of the attack" may be used in self-defense) (emphasis added). Certainly, no reasonable mind could believe that taking a party's documents is a certain or necessary way to effectively avoid physical harm at the hands of that party.

This Court seems to have invoked the Section 261 doctrine of self-defense on the basis of defendant's alleged fear of a lawsuit as well as his generalized fear of physical harm. Fear of potential litigation -- even if the fear were reasonable -- does not even remotely establish the predicate for invoking the self-defense doctrine. As the discussion above makes clear, defendant must have reasonably apprehended present and immediate bodily injury.

This Court's lengthy quotation (slip op. at 22) of the trial court's conclusory "findings" cannot save the judgment below. The trial court made no findings that Armstrong was in immediate danger of either an assault or a lawsuit. Given the uncontroverted facts out of Armstrong's own mouth, there is no way such findings could have been made in good faith. Indeed, the trial court's statement that Armstrong believed "he had to go public" is without record support and indeed is directly contrary to the clear evidence that Armstrong acted secretly

and actually DENIED to the Church doing what he in fact had done.

It is precisely the trial court's inadequate, conclusory, and unsupportable findings and conclusions which are at issue in this appeal. This Court may not properly decide the appeal merely by quoting the trial court's findings. Even a cursory analysis of the critical facts and the actual law requires reversal.

B. The Intrusion Upon Privacy Claim

As is repeatedly emphasized in appellants' briefs, and as even the trial court recognized, plaintiffs alleged and proved a prima facie claim of invasion of privacy by intrusion, and not a claim of invasion of privacy by publication. The difference is critical in this case: the conditional privileges referred to in Restatement 2d Torts, § 652G and § 594 relied upon by the Court, are applicable to invasion of privacy by publication, not by intrusion. Dietemann v. Time, 449 F.2d 245 (9th Cir. 1971); Pearson v. Dodd, 410 F.2d 701 (D.C. Cir. 1969).

This Court's attempted distinction of Dietemann and Pearson on the grounds that those cases rejected justification defenses for non-publication torts is thus wholly circular. It is precisely because those cases distinguished between the torts of intrusion into privacy and intrusion by publication that they govern the present case. This Court apparently did not understand that this case is an intrusion case, not a publication case.

The torts of intrusion into privacy and invasion of

privacy by publication are recognized as distinct by Restatement 2d. Torts §§ 652A(1), 652B and the California law. See Miller v. NBC, Co., 187 Cal.App.3d 1463, 1482; 232 Cal.Rptr. 668 (1986) (quoting Prosser, Privacy, 48 Cal. Law Review 383, 389 (1960); Nicholson v. McClatchey Newspapers, 177 Cal.App.3d 509, 223 Cal.Rptr. 58, 63 (1986) (citing Dietemann approvingly).

The tort of intrusion is defined as follows:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Restatement 2d, Torts § 652(B).

In the leading case applying the California common law of "intrusion" upon privacy, defendant's agents, without plaintiff's consent, made photographs and recordings of plaintiff in his den, engaged in the allegedly fraudulent practice of medicine. Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971). The court concluded that California's law of invasion of privacy includes "instances of intrusion, whether by physical trespass or not, into spheres from which an ordinary man in plaintiff's position could reasonably expect that the particular defendant should be excluded," and the defendant's conduct constituted such an intrusion. Id. at 249. (Quoting Pearson v. Dodd, 410 F.2d 701, 704 (D.C. Cir. 1969), cert. denied, 395 U.S. 947 (1969)). See also Miller v. National Broadcasting Co., 187 Cal.App.3d 1463, 232 Cal.Rptr. 668, 679 (1986); Nicholson v. McClatchy

Newspapers, 177 Cal.App.3d 509, 223 Cal.Rptr. 58, 63 (1986) (citing Dietemann approvingly).

There is no question that the facts of this case, as found by the trial court, establish the elements of the tort of intrusion: The documents in question were conceded by defendant to be private and personal; and defendant's unauthorized assumption of control over such deeply private documents would unquestionably violate the expectations -- and offend the sensibilities -- of the ordinary, reasonable man. That the documents at issue -- personal letters, diaries, self-analyses, journals, family memorabilia, financial documents, documents tracing the personal growth of a religion's founder over the course of years -- are private materials hardly requires discussion. Indeed, defendant has repeatedly admitted as much.

Thus, the trial court below properly found that plaintiffs had established a prima facie case of intrusion. Thus, the trial court's factual findings explicitly stated that the documents were "private" and "confidential" (A.App. 254-255); that Armstrong, after ending his employment with the Church, took control of the documents from Garrison in order to deliver them to other parties hostile to the Church (A.App. 254); that, at the time, both defendant and Mr. Garrison knew that although the Church had authorized "certain specific purposes" for using the documents, defendant was now taking them "for other purposes to plaintiff's detriment," (A.App. 254); and that these tactics sufficed for a prima facie finding of invasion of privacy. (A.App. 255).

There can thus be no question that, under California law,

the documents in question fall within the zone of privacy "'from which an ordinary man in plaintiffs' position could reasonably expect that the particular defendant should be excluded.'" Dietemann, 449 F.2d at 249, quoting Pearson v. Dodd, 410 F.2d 704; see also Miller v. National Broadcasting Co., 187 Cal.App.3d 1463, 1484, 232 Cal.Rptr. 668, 679 (1986). Equally, under the Restatement standard it is unquestionable that the unauthorized assumption of control over personal documents "would be highly offensive to a reasonable person." Restatement 2d. of Torts, § 652B. Indeed, Comment b to Section 652B states explicitly that an "intrusion upon seclusion" claim arises from unauthorized interference with "private and personal mail" and with other "personal documents."

Defendant intrusively acquired the private documents by removing them from the Church in December 1981, and by retrieving them from Omar Garrison's storage in the spring/summer of 1982, with the intent of using them for his own purposes. Thus, the trial court explicitly found that defendant took the documents from Mr. Garrison in order to deliver them to Mr. Flynn and others. (App. 254.) While the trial court found that Mr. Garrison purported to give permission to defendant to take the documents (id.), there is no dispute that both Mr. Garrison and defendant were aware that they were authorized to use the documents only for purposes of preparing the biography of Mr. Hubbard. See Statement of Facts, supra. Indeed, the trial court found that defendant's use of the documents was for purposes other

than the "certain specific purposes" that had been authorized. (App. 254). Thus, notwithstanding Mr. Garrison's purported grant of "permission,"^{6/} defendant's acquisition of the documents for unauthorized purposes was a wrongful intrusion.

But even if defendant's physical acquisition of the documents had been authorized, his later retention of control over them, including his assertion of the power to grant others access to them, fits securely within the definition of intrusion. The Restatement (Second) of Torts states that an intrusion claim consists of "an intentional interference with [plaintiff's] interest in solitude or seclusion, either as to his person or as to his private affairs or concerns," and that such intentional interference may occur "physically or otherwise." Section 652B, and Comment a (emphasis added). Numerous courts have adopted the rule that both physical and non-physical interferences with a person's control over others' access to his private information may constitute tortious intrusions. E.g., Dietemann v. Time, 449 F.2d at 249; Pearson v. Dodd, 410 F.2d at 704; Rogers v. Loews, 526 F.Supp. 523, 528 (D.D.C. 1981); Sofka v. Thal, 662 S.W.2d 502, 510 (Mo. 1983); Oliver v. Pacific Northwest Bell, 632 P.2d 1295, 1298 (Or.App. 1981); Lamberto v. Bown, 326 N.W.2d 305, 309 (Iowa 1982); Froelich v. Adair, 516 P.2d 993, 995 (Kan. 1973).

Since publication is not an element of the tort of

6. Mr. Garrison testified that he did not intend to give permission for the wholesale taking of documents undertaken by Armstrong, or for the purposes to which Armstrong put them to use. (R.T. 1347-50).

intrusion, the conditional defenses to the invasion of privacy by publication tort per force do not apply. That is precisely what the Dietmann and Pearson cases hold. This Court's distinction of them is no distinction at all.

Once the tort of intrusion is recognized as being the applicable tort in this case, the law -- typified by Dietmann and explicated by the Restatement -- clearly forbids imposition of justification defenses such as those imposed here, at least short of an imminent threat to life or limb which, as we have shown, did not exist here. We refer the Court to our detailed discussion of the applicable law in our opening brief at 37-46, and our original reply brief, incorporated on this appeal, at pp. 22-31.

C. Breach of Confidence and Fiduciary Duty

This Court's conclusory findings that Armstrong can invoke a justification defense to these torts under the facts of this case are equally flawed, for the reasons stated in our previously filed briefs. The critical point, again, is that a confidential agent or employee cannot be free to violate his trust and duty for his own personal advantage, absent a reasonable belief that he is in immediate and imminent physical danger. See Comment to Restatement 2d of Torts, § 418; Patrick v. Cochise, 259 P.2d 569 (Arizona 1953) (the only court to address the issue). This Court is the first ever to hold that a confidential agent is free to violate his trust merely upon the speculation that he may be subject to some future assault or lawsuit. Where the agent has time to seek legal protection by resorting to the police or the courts, he

must do so, just as the police must seek a warrant to seize private documents, absent exigent, immediate circumstances.

The practical implications of the Court's novel defense are as anomalous and damaging in the broad area of fiduciary and confidential relations as in the area of private protections. It is not hyperbolic to say that permitting confidential employees to siphon the most sensitive private documents to their employers' adversaries, based on the employees' subjective assessment that it is personally advantageous, would revolutionize the conduct of daily business operations. Such a rule is particularly absurd in cases, such as this, in which the fiduciary has ample time to resort to legal process for objective determination of whatever claim he has that his personal interests are threatened by his employer's conduct. The courts and the Restatement, recognizing the untoward policy implications of a defense as broad as that applied by the trial court, have narrowly limited the exceptions to an agent's fiduciary and confidential duty to his principal. The exceptions do not apply here.

D. Fair Trial

This Court brushes off the appellants' arguments that the trial court's statement of decision itself demonstrates that it was improperly affected by the evidence admitted only to show Armstrong's state of mind, and that the trial court wound up considering such evidence for its truth. This Court's dismissal of the argument is particularly troublesome because this Court itself fell into the same trap. As we noted previously, this Court made statements of absolute facts based

upon, at the most, evidence relating to Armstrong's state of mind. Due recognition of this fact should lead the Court to understand that the trial court was also so affected, thus explaining the trial court's indefensible factual and legal conclusions.


III. Conclusion

Armstrong undisputably converted the documents, intruded into the plaintiffs' privacy, and breached his fiduciary duties. He did not believe he was in imminent physical danger, or even that he was about to be sued, nor was there any basis for him reasonably to so believe. He acted secretly and deliberately over a period of many months. He did so, by his own admission, to help his attorney in other lawsuits by other people. He was not privileged to do so.

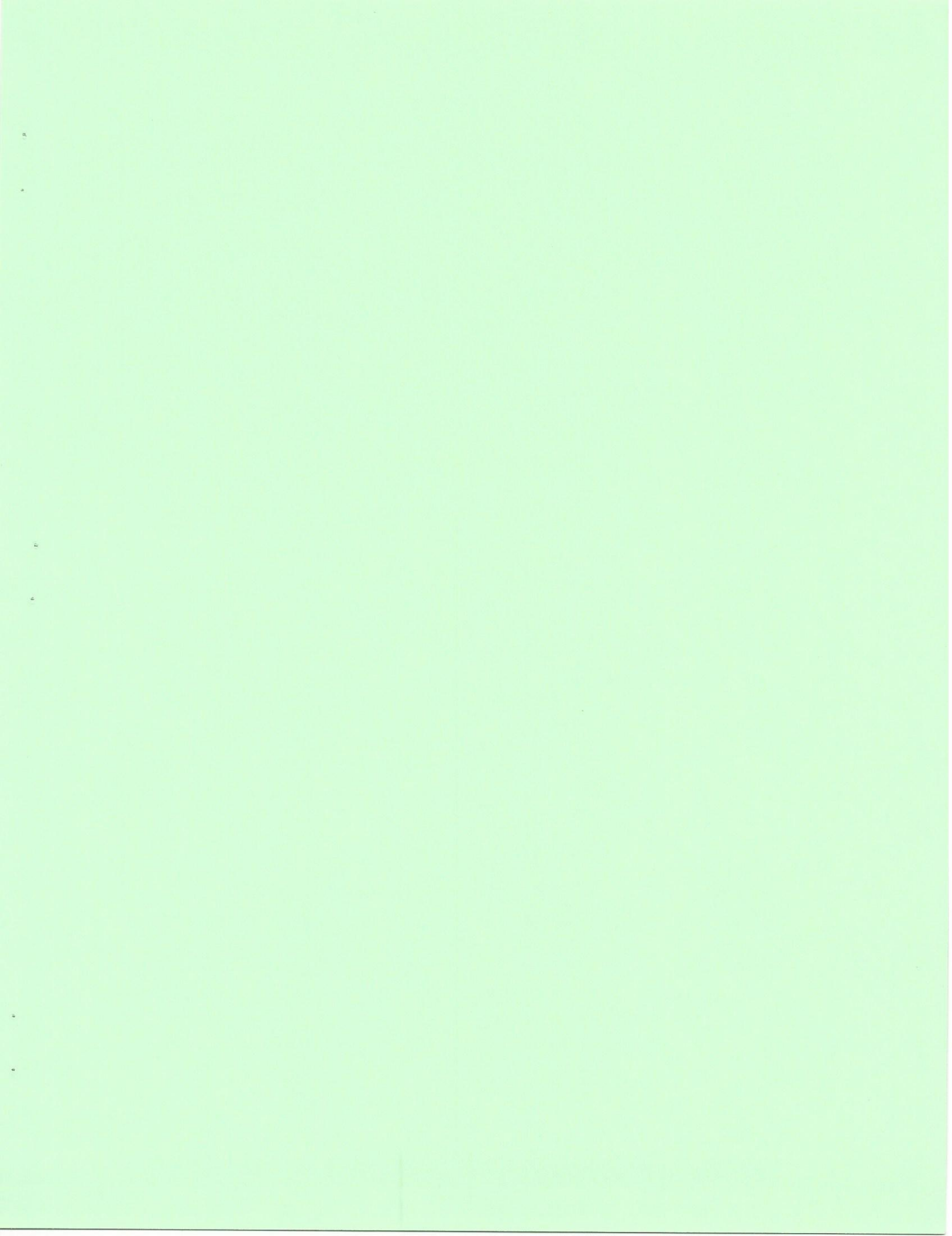
The petition for rehearing should be granted, and the judgment should be reversed.

Dated: August 12, 1991

Respectfully submitted,

By: 
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On August 13, 1991, I caused to be served the foregoing document described as PETITION FOR REHEARING on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Gerald Armstrong
707 Fawn Drive
Sleepy Hollow, California 94960

Supreme Court of the
State of California
300 South Spring Street
Los Angeles, California 90013

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on August ¹³, 1991, at Hollywood, California.
kkk

Helena K. Lobrin

DECLARATION OF MARK C. RATHBUN

I, Mark C. Rathbun, hereby declare:

1. I am the President of the Religious Technology Center ("RTC"). RTC has the responsibility of ensuring that the nature and quality of the services and products associated with the religion of Scientology and with its technologies of spiritual counselling, ethics and administration are properly applied in accordance with the standards set forth by the Founder of the Religion, L. Ron Hubbard. I have personal knowledge of the facts set forth below, and if called upon to do so, I could and would competently testify thereto.

2. In addition to my corporate position as President of RTC, I also hold the ecclesiastical position of Inspector General for Ethics. The function of that position is to ensure the standard application of the ethics technology of the Scientology religion. I am responsible for ensuring that the ethical standards of Scientology are observed to the letter. My life is dedicated to the support and preservation of the Scientology religion and its scripture, which consists of the religious writings of Mr. Hubbard.

3. I am familiar with this litigation and the outrageous accusations introduced against the Church of Scientology under the guise of an explanation of Armstrong's "state of mind." Armstrong was thus permitted to introduce evidence which twisted and perverted the facts about his former religion and its system of ethics and justice one hundred and eighty degrees from the truth. In fact, Scientologists, as a group, comprise

the most ethical people, following the highest ethical standards, of any group in the world today.

4. At trial, the Church of Scientology of California was effectively prevented from placing into the record the overwhelming evidence of Scientology's emphasis on honesty and integrity, or from demonstrating to the Court the truth about its system of ethics and justice which its parishioners prize so highly. The trial court erred when it accepted, as has this Court, Armstrong's evidence concerning his alleged "state of mind" and then used that evidence to support findings of fact as though such supposed evidence had been admitted for the truth of the assertions. Consequently, the false accusations leveled by Amrstrong were never answered, as they could have been, with a resounding demonstration by the Church of the standards of ethical conduct that are required of each and every Scientologist and of the developments of L. Ron Hubbard which led to the creation of an ecclesiastical ethics and justice system that is honest, ethical and fair. This declaration is an attempt to demonstrate to this Court just a fraction of the evidence that the Church would have supplied to the Court below, had it been allowed to do so, to prevent the reliance by that Court and now this Court on the distorted picture of Scientology created by Armstrong.

5. Armstrong spent a considerable time at trial asserting that an alleged practice of "fair game" made him fearful, and that this fear was a justification for his theft of documents. Armstrong's use and description of the term "fair game," and his allegations of fear concerning it, are entirely belied by

Church scripture, doctrine and essential philosophy. "Fair game" was a term used in the Church for a short while in the 1960's. By the time Armstrong first entered the Church, the term was no longer used, and the policy referring to it had been expressly cancelled.

6. As used for this brief time within the Church, "fair game" had not even the slightest resemblance to the wild accusations made by Armstrong. It meant simply that an individual so labelled was not entitled to the protection of the Scientology system of justice. In this regard it is similar to the Old English concept of "outlaw" which was "one who is put out of the protection or aid of the law." (Black's Law Dictionary, Rev. Fourth Edition, pg. 1255).

7. The Scientology ethics and justice system is a privilege and benefit for Scientologists. Scientologists can and do avail themselves of the Scientology ethics and justice system as it is inexpensive, swift, sane, accurate and based solely on getting to the truth. One is judged by a committee of his peers whose only task is to get to the truth of disputes between Scientologists. Scientology justice committees do not punish, they only get to the truth and attempt to rectify injustices. The system is based on trust, and because Scientology is predicated on truth and honesty, no Scientologist in good standing would even think of lying in such a proceeding or attempt to derail and misdirect a proceeding through false and inflammatory testimony such as one sees in civil cases in every courthouse.

8. One of the fundamental discoveries of L. Ron Hubbard

is that man is basically good. As an individual becomes more aware and able through the application of Scientology religious technology, he becomes more honest, ethical, and interested in helping others. This is why Scientologists become the most valued members of society as they advance in Scientology.

L. Ron Hubbard developed a system of ethics and justice which is based on this bedrock principle. The Scientology ethics and justice system is built on the premise that honesty and integrity are essential to happiness and survival.

9. Scientologists consider this ethics and justice system a major benefit derived from membership in the Church. To expel a person from Church membership and thereby withdraw the protection and availability of the Church's ethics and justice system is the harshest penalty in the Scientology religion. Even then, however, because Scientologists believe that man is basically good, the door is always left open for that person to return to Church membership.

10. The reference to a person being "fair game" is a direct reference to what individuals who cannot have access to the Scientology justice system are likely to receive at the hands of the justice systems extant in society. Compared to Scientology ethics and justice procedures, lay justice proceedings are, in fact, barbaric.

11. Contrary to the allegations made by Armstrong throughout the trial of this case and repeated unquestioningly by Judge Breckenridge, the basic values of honesty and integrity are the bedrock upon which Scientologists build their

lives and upon which any individual must so build if he is to live happily and in harmony with his fellows.

12. The scriptures of Scientology are replete with admonitions to its adherents to build their lives on the foundations of honesty and integrity. As Mr. Hubbard stated in a technical bulletin titled " Auditor's^{1/} Rights Modified," written in 1972: "The road to truth is begun with honesty." ^{2/} This is a road that all Scientologists, by definition, consider that they are following.

13. Mr. Hubbard's injunction to be truthful covers all aspects of an individual's and organization's activities. For example, he laid down a firm rule for Church of Scientology staff in official dealings: "Never use lies." ("The Missing Ingredient", [August 13, 1970]). In a policy directive entitled, "Safe Ground" (October 27, 1974), Mr. Hubbard reiterated this point: "1. NEVER SAY OR PUBLISH ANYTHING YOU CANNOT PROVE OR DOCUMENT; 2. ALWAYS DOCUMENT THE TRUTH TO OPPOSE LIES."

14. The value of truth and honesty in one's dealing with others goes much deeper than mere pragmatism. Honest and ethical behavior enhance the well-being of an individual and a group; dishonesty and unethical acts degrade a person and an

1) An "auditor" is a Scientology minister who counsels parishioners. The term is derived from a Latin term meaning one who listens.

2) Due to space limitations, copies of the writings of L. Ron Hubbard referred to herein are not attached, but can be supplied to this Court upon request.

organization. In a book originally published in 1951, Mr. Hubbard explained why maintaining high ethical standards is so important, not just to Scientologists, but to everyone:

Thus, dishonest conduct is nonsurvival. . . . The keeping of one's word, when it has been sacredly pledged, is an act of survival, since one is then trusted, but only so long as one keep's one's word.

To the weak, to the cowardly, to the reprehensibly irrational, dishonesty and underhanded dealings, the harming of others and the blighting of their hopes seem to be the only way of conducting life. Unethical conduct is actually the conduct of destruction and fear; lies are told because one is afraid of the consequences should one tell the truth; thus, the liar is inevitably a coward, the coward is inevitably a liar.

L. Ron Hubbard, Science of Survival, at 142-143 (1989 Ed.).

15. The subject of honesty and ethical behavior permeated Mr. Hubbard's writings throughout the years. In a 1960 issue entitled "Honest People Have Rights, Too," Mr. Hubbard stated:

Individual rights were not originated to protect criminals but to bring freedom to honest men. Into this area of protection then dived those who needed "freedom" and "individual liberty" to cover their own questionable activities.

Freedom is for honest people. No man who is not himself honest can be free--he is his own trap. When his own deeds cannot be disclosed then he is a prisoner; he must withhold himself from his fellows and is a slave to his own conscience. Freedom must be deserved before any freedom is possible.

* * *

Freedom for Man does not mean freedom to injure Man. Freedom of speech does not mean freedom to harm by lies. To preserve that freedom one must not permit men to hide their evil intentions under the protection of that freedom. To be free a man must be honest with himself and with his fellows. If a man uses his own honesty to protest the unmasking of dishonesty, then that man is an enemy of his own freedom.

Mr. Hubbard ended this bulletin with the reminder that:

"On the day when we can fully trust each other, there will be peace on Earth. Don't stand in the road of that freedom. Be free, yourself."

Id.

16. An entire book was compiled from Mr. Hubbard's writings dedicated to the subject of ethics, entitled Introduction to Scientology Ethics. The book is replete with basic truths on this subject which cannot be fully discussed in this limited space. The following statements are representative of the concepts which it contains:

The man who lies, the woman who cheats on her husband, the teenager who takes drugs, the politician who is involved in dishonest dealings, all are cutting their own throats.

* * *

It may come as a surprise to you, but a clean heart and clean hands are the only way to achieve happiness and survival. The criminal will never make it unless he reforms; the liar will never be happy or satisfied with himself until he begins dealing in truth.

L. Ron Hubbard, Introduction to Scientology Ethics, at 29 (1989 Ed.).

17. What Scientologists hope to achieve through living ethical, honest lives and showing respect for their fellow man is quite simple: happiness. Albeit simple and indeed a basic desire amongst all men, few know the requisites to true happiness as well as a Scientologist.

As for ideals, as for honesty, as for one's love of one's fellow man, one cannot find good survival for one or for many where these things are absent.

* * *

A man who is known to be honest is awarded survival-- good jobs, good friends. And the man who has ideals-- no matter how thoroughly he may be persuaded to desert them, survives well only so long as he is true to those ideals.

(Introduction to Scientology Ethics, at 23)

18. In a bulletin from 1961 entitled, "Clean Hands Make a Happy Life", Mr. Hubbard underscored the basic problem behind the lack of human happiness:

For the first time in the soggy stream that's history to the human race, its possible that happiness exists....

What has made all Man a pauper in his happiness?

Transgressions against the mores of his race, his group, his family! ...

And as we wander on, transgressing more, agreeing to new mores and then transgressing those, we come into that sunless place, the prison of our tears and sighs and might-have-beens, unhappiness.

* * *

All Mankind lives and each man strives by codes of conduct mutually agreed. ...

But now against that codes there is transgression. And so because the code was held, whatever code it was, and Man sought comfort in Man's company, he held back his deed and so entered then the bourne in which no being laughs or has a freedom in his heart.

So down the curtains come across the brightness of the day and dull-faced clouds enmist all pleasant circumstances. For one has evilly transgressed and may not speak of it for fear all happiness will die.

19. With direct regard to the subject of spiritual progress in the Scientology religion, also referred to as "case gain," Mr. Hubbard wrote a bulletin in 1985 called

"Honesty and Case Gain." In that Bulletin, he stated:

Thus, one can bar his own way up the Bridge^{3/} by dishonesty.

I always feel a bit sad when I see somebody doing himself in this way. It is so pointless.

Another of his writings on this subject matter is a book entitled, The Way to Happiness. This book has been the source of a grass roots movement to improve life in the world by providing non-denominational, common sense, moral principles for this modern time. The book is divided into different precepts, with titles such as "Be Worthy of Trust," "Fulfill Your Obligations," "Do Not Steal," "Respect the Religious Beliefs of Others," "Don't Do Anything Illegal," and "Seek to Live With the Truth." A few brief excerpts will show its teachings:

Be Worthy of Trust.

Unless one can have confidence in the reliability of those about one, he, himself, is at risk. When those he counts upon let him down, his own life can become disordered and even his own survival can be put at risk.

Mutual trust is the firmest building block in human relationships. Without it, the whole structure comes down.

* * *

When one gives an assurance or promise or makes a sworn intention, one must make it come true. If one says he is going to do something, he should do it.

If he says he is not going to do something, he should not do it. ...

3) The Bridge is the term which is used to describe the series of gradient steps of spiritual awareness which one achieves in the Scientology religion.

People who keep their word are trusted and admired. People who do not are regarded like garbage. Those who break their word often never get another chance.

A person who does not keep his word can soon find himself entangled and trapped in all manner of "guarantees" and "restrictions" and can even find himself shut off from normal relations with others. There is no more thorough self-exile from one's fellows than to fail to keep one's promises once made.

(The Way To Happiness, at 191-192; 198-200.)

The honesty of an individual is something that affects those with whom a person lives and works. As Mr. Hubbard said in a writing titled "Ethics and Executives," 3 May 1972R,

"Dishonesty, false reports, an out-ethics [i.e., unethical] personal life, should all be looked for and, by persuasion, should be corrected."

Again and again Mr. Hubbard has stressed that dishonesty in one's dealing with others is harmful not only to the other individual, but to one's self:

The ruin of another's life can wreck one's own. Society reacts -- the prisons and the insane asylums are stuffed with people who harmed their fellows. But there are other penalties: whether one is caught or not, committing harmful acts against others, particularly when hidden, can cause one to suffer severe changes in his attitudes toward others and himself, all of them unhappy ones. The happiness and joy of life depart.

(The Way To Happiness, at 322 - 324.)

20. This standard is not limited to simply those with whom a person works with directly but in fact all those with whom one may come in contact in the community and within society:

A country has laws and regulations to coordinate its activities.

One does NOT seek to get around these or avoid

these or find loopholes in them. This is
COMPLICATED AND DISHONEST.

It is MUCH simpler just to know and obey
them.

"Regulations and Laws, Obedience To," 27 October 1973.

21. In a writing issued in 1980 entitled, "Ethics,
Justice, and the Dynamics,"^{4/}, L. Ron Hubbard wrote:

Years ago I discovered and proved that man is
basically good. This means that the basic
personality and the basic intentions of the
individual, toward himself and others are good.

When a person finds himself committing too
many harmful acts against the dynamics, he becomes
his own executioner. This gives us the proof that
man is basically good. When he finds himself
committing too many evils, then, causatively,
unconsciously or unwittingly, man puts ethics in on
himself by destroying himself; and he does himself
in without assistance from anybody else.

This is why the criminal leaves clues on the
scene, why people develop strange incapacitating
illnesses and why they cause themselves accidents
and even decide to have an accident. When they
violate their own ethics, they begin to decay. They
do this all on their own, without anybody else doing
anything.

4) L. Ron Hubbard's most fundamental discovery was the
discovery that whatever else they were doing, all life was
seeking to survive. Survival is the common denominator of all
life. The basic urge to survive manifests itself in different
ways. These ways have been divided into eight parts, or
"dynamics". Each of these dynamics is interdependent on the
others. Each of us is striving to survive along or through
these subdivisions of the basic urge to survive: 1) the urge to
survive as an individual; 2) the urge to survive through sex
and the rearing of children; 3) the urge to survive through
groups; 4) the urge to survive as mankind, 5) the urge to
survive through living things, i.e., animals or plants; 6) the
urge to survive through the physical universe (matter, energy,
space and time [mest -- the physical universe]); 7) the urge to
survive through the spiritual universe; and 8) the urge to
survive through God, or the infinite.

22. The teachings of Mr. Hubbard are unequivocal on this point. The commission of dishonesties, of harmful acts against another is the road to personal destruction, to the loss of awareness, the loss of abilities, to personal unhappiness and the destruction of positive interpersonal relationships. Only the litigants who, due to their own harmful acts, have already travelled down this route or those who, through misinformation or ignorance know no better, would advance or believe that the scriptures of the Church could support the commission of harmful acts against one's fellow man.

23. In fact, the precise opposite is true. Scientology scriptures detail how it is that harmful acts against one's fellows bring about the loss of integrity and decrease one's ability to handle life successfully. The mechanism at work here was presented by Mr. Hubbard in 1968:

There was an important discovery made in 1952 . . . which did not get included in "Book One," Dianetics: The Modern Science of Mental Health.

This was the "overt-motivator sequence. . ."

AN OVERT, in Dianetics and Scientology, is an aggressive or destructive ACT by the individual against one or another of the eight dynamics (self, family, group, mankind, animals or plants, mest, life or the infinite).

A MOTIVATOR is an aggressive or destructive act received by the person or one of the dynamics.

The viewpoint from which the act is viewed resolves whether the act is an overt or a motivator.

The reason it is called a "motivator" is because it tends to prompt that one pays it back -- it "motivates" a new overt.

When one has done something bad to someone or something, one tends to believe it must have been "motivated."

Bulletin of 20 May 1968, "Overt-Motivator Sequence."

Thus, an individual who commits harmful acts against himself, another, the social order and so forth, grows invariably at odds with the person or institution whom he has attacked.

24. Mr. Hubbard explained this phenomena further in a lecture given to Scientology ministerial students:

[M]an is basically good, despite his reactive bank.^{5/} The reactive bank is only composed to make a man commit overts, which is against his better nature. If he commits these overts, therefore, he'll trap himself because he won't go on communicating, having committed them. So it's the perfect trap. You do not want to talk to people you have wronged. ... They commit an overt act, don't you see, and then they will try to withhold and sever the communication line for fear that they will commit another overt act. That actually is the fundamental think of man.

Tape Lecture of July 2, 1964, "O/W Modernized and Reviewed."

25. The path one trods when he commits harmful acts is the road to oblivion. It is the descent not only into despair and destroyed relationships; it is also the way to personal degradation and criminality. "A criminal is one who is motivated by evil intentions and who has committed so many harmful overt acts that he considers such activities ordinary." (Bulletin of 15 September 1981, "The Criminal Mind,") The desperate straits to which the criminal has descended have been clearly described by Mr. Hubbard:

5) The "bank" is a slang term referring to a person's "reactive bank", that portion of a person's mind wherein all painful experience is stored below a person's awareness. The reactive mind is a stimulus-response unconscious mind which can exercise control over the individual without that person's awareness.

It is a mind like any other mind but it has gone wrong. It is motivated by evil intentions which, even if idiotic, are greater than the possessor's ability to reason. The criminal, even when he seems most clever, is really very, very stupid. The evil intentions get dramatized by senseless overt acts which are then withheld, and the final result is a person who is more dead than alive and who faces a future so agonizing that any person would shudder at it. The criminal, in fact, has forfeited his life and any meaning to it even when he remains "uncaught" and "unpunished," for in the long run, he has caught himself and punishes himself for all eternity. No common judge can give a sentence as stiff as that. They know down deep that this is true and that is why they scream with such ferocity that men have no souls. They can't confront the smallest part of what awaits them.

When you understand what the criminal mind consists of, you can also understand how ghastly must be the feelings or lack of them with which the criminal has to live within himself and for all his days forever. He is more to be pitied than punished....

THE CRIMINAL, NO MATTER WHAT HARM HE IS DOING TO OTHERS, IS ALSO SEEKING TO DESTROY HIMSELF. HE IS IN PROTEST AGAINST HIS OWN SURVIVAL.

Id.

26. The individual, having descended away from personal honesty and integrity, down the dwindling spiral of the overt-motivator sequence, to the depths of criminality described by Mr. Hubbard in the attached bulletin arrives at a point, where they are totally consumed by their criminality. A person at this point sees all life as having the same sordid motives he does. Of such an individual, Mr. Hubbard wrote:

THE CRIMINAL ACCUSES OTHERS OF THINGS WHICH HE HIMSELF IS DOING.

* * *

THE CRIMINAL MIND RELENTLESSLY SEEKS TO DESTROY ANYONE IT IMAGINES MIGHT EXPOSE IT.

* * *

THE CRIMINAL ONLY SEES OTHERS AS HE HIMSELF IS.

Id.

27. The entire thrust of the training, auditing, ethics and justice technologies of the Scientology religion is to improve the spiritual well-being of the individual and to make him more able so that he is able to assist others to attain greater spiritual awareness. Of all of the religions in the world, Scientology is unique in the degree it places emphasis upon the value of self-determined right conduct, honesty and personal integrity. The scriptures, however, do far more than simply warn of the consequences of evil ways. They also set forth techniques for the eradication of the harmful effects of past transgressions and the rehabilitation of an individual's personal integrity and abilities. Confessional counselling sessions are standardly provided to Scientologists in order to help them unburden themselves of past transgressions. Through such counselling the individual Scientologist is made more able and is brought to levels of increased affinity and responsibility.

28. The ethics and justice system of Scientology, then, has honesty and integrity as its underpinnings. As a subject, ethics consists simply of the actions taken by an individual on himself to improve his survival. Through Scientology ethics a person is taught not a rote series of do's and don't's, but tools which he can use to make ethical and moral choices and decisions.

29. In a policy letter of 12 July 1980 later revised on 5 November 1982, entitled "The Basics of Ethics," Mr. Hubbard

wrote of the unfortunate state a person finds himself in when he is unable to ethically deal with his daily life:

The individual who lacks any ethics technology is unable to put in ethics on himself and restrains himself from contrasurvival actions, so he caves himself in. And the individual is not going to come alive unless he gets hold of the basic tech of ethics and applies it to himself and others.

30. The basic ethics technology discovered by L. Ron Hubbard is found in the ethics conditions and their formulas. These are described in the book, Introduction to Scientology Ethics.

The basic tools used to get and keep ethics in are the ethics conditions and their formulas.

An organization or its parts or an individual passes through various states of existence. These, if not handled properly, bring about shrinkage and misery and worry and death. If handled properly they bring about stability, expansion, influence and well-being.

* * *

The different conditions formulas make up a SCALE which shows the condition or state, which is to say the degree of success or survival of an individual...

(Introduction to Scientology Ethics, at 37-38.)

31. The ethics conditions are: Confusion, Treason, Enemy, Doubt, Liability, Non-Existence, Danger, Emergency, Normal Operation, Affluence, Power, Power Change. Each condition carries with it a series of steps to follow, called formulas, which result in improvement up the rising scale of conditions. The application of the specific formulas for each condition are a basic tool which Scientologists use to live happier, more successful lives. Each condition describes a

level of survival in which an individual, business or other activity can be located at any given moment. Mr. Hubbard has laid out an exact formula, or set of steps, for each condition, which, if correctly followed, will result in the attainment of a higher condition. For example, both a new marriage and a new business start out in a condition of "non-existence" and to succeed, must follow the formula steps of getting in communication with one's partner or potential customers, finding out what is needed from that person, and providing that. Whether one is doing well, poorly, or just getting by, there is a condition formula which applies. (For a full description of the various ethics conditions and their individual formulas, see Introduction to Scientology Ethics, pp. 56-104.) Through the use of the correct formula, one is able to improve how he or she is doing.

32. Condition formulas are used to handle all types of situations, favorable and unfavorable, alike. For example, if one made a bad error on one's job, he could use an ethics condition, such as the Liability formula, as a guide to getting back on top of the situation -- perhaps saving his job in the process. And if one were doing very well in some area in life, the Affluence formula would provide steps to help isolate the important points of one's success and reinforce those.

33. Scientology also has an ecclesiastical justice system. Justice is applied in Scientology when an individual fails to apply the tools of ethics to correct his own unethical activities, and is causing problems for others.

34. The Scientology justice system has as its basic

premise that justice is to be used only so long as it is necessary to restore the individual to self-determined ethical conduct. It does not have punishment as a goal; rather, the purpose is to rehabilitate the individual's ability to use and apply the ethics technology. For this reason, the justice system is a gradient one, consisting of a whole series of actions which might be taken in an appropriate case to ensure that ethical conduct is restored.

35. These gradient steps are specified in a writing of Mr. Hubbard dated 29 April 1965, entitled "Ethics Review." The various tools are laid out in a progression of lightest to most severe, ranging from actions such as "noticing something non-optimum and commenting on it to the person," to the severest discipline in the Scientology religion: "expulsion from Scientology." None of the gradients carries with it physical punishment of any kind.

36. L. Ron Hubbard has stressed that the lightest forms of these levels are to be used first, and only increased as necessary to help the person:

Scientology Ethics are so powerful in effect
... that a little goes a very long ways.

Try to use the lightest form first.

Id.

37. The Scientology justice system also provides ecclesiastical fact-finding bodies and formal justice actions which help determine the appropriate way to deal with a Scientologist who has been causing difficulty for other Scientologists. The first of these is an "ethics hearing."

Such a hearing consists of a meeting of the accused with a "hearing officer." This is a fact-finding body; the accused is presented with the written accusations, is given the opportunity to question the people who have made the accusations, if necessary, and is given the opportunity to explain fully his own side of the story. The hearing officer then makes a recommendation as to how the situation should be handled.

38. If it is established by verified evidence in an ethics hearing that the person has been involved in some violations of Scientology codes or procedures, a "Court of Ethics" may be convened. The purpose of the Court is to determine what discipline should be imposed for the wrong-doing. For example, if a staff member is continually late for or absent from his assigned duties, he might be called before such a court and might be assigned a short, special project to clean the slate for the problems he has caused. Such an action would bring home to him that he is expected to appear for work on time and should regulate his actions accordingly. (See, policy letter of 26 May 65, Issue III, "Courts of Ethics,").

39. The most serious type of justice action is a Committee of Evidence. This is "a fact-finding body composed of impartial persons properly convened by a convening authority which hears evidence from persons it calls before it, arrives at a finding and makes a full report and recommendation to its convening authority for his or her action." (Policy letter of 27 March 1965, "The Justice of Scientology -- its Use

and Purpose.) The individual or individuals who are the subject of the Committee of Evidence are present at all times when evidence is presented and are given the opportunity to examine all witnesses. Once the Committee has determined the facts of the matter, it makes its recommendation to the "convening authority" who then reviews all the evidence and recommendations and accepts, or modifies the Committee's findings and recommendations. The protection which committees of evidence provide for Scientologists from possible arbitrary sanctions or sanctions arising out of momentary upset is substantial. Thus, for example, staff members may not be suspended, demoted, or improperly transferred to another job without a committee of evidence. (Id.)

40. Scientologists can and frequently do avail themselves of the Scientology justice system as it is free, swift, sane, accurate and based solely on getting to the truth.

41. The value of a committee of evidence was described by Mr. Hubbard in 1965 in a policy letter entitled "The Justice of Scientology -- Its Use and Purpose; Being a Scientologist":

Committees of Evidence work. I recall one Tech[nical] Director [Church executive in charge of administering the delivery of Church services according to the scriptures or "Tech"] accused of tampering with a student. I was told he was about to be disciplined and sacked. I stopped that action and had a Committee of Evidence convened. Accurate testimony revealed the story false and the Tech Director innocent. Without that committee he would have been ruined. I know of other instances where a committee found the facts completely contrary to rumor. Some are guilty, most are innocent. But thereby we have justice and our necks aren't out. If a person is to keep the law, he or she must know what the law is. And must be protected from viciousness and caprice in the name of law. If a person doesn't keep the law, knowing well what it

is, he or she hurts all of us and should be handled. Our justice really rehabilitates in the long run. It only disciplines those who are hurting others and gives them a way to change so they can eventually win too -- but not by hurting us.

42. As set forth above, the ultimate penalty under the justice codes of the Church of Scientology is expulsion from the Church. Mr. Hubbard wrote in a 1965 policy letter that to withdraw the protection and availability of the Scientology justice system is the harshest penalty in that system; and that is the effect of expulsion. Yet, even a person who has been declared to be a suppressive and has been expelled from the Church, however, is still afforded an opportunity to redeem himself and to return to good standing. To do so, the person must follow a simple, five step, procedure: (A) "cease all attacks and suppressions so he, she or they can get a case gain"; (B) make "a public announcement to the effect that they realize their actions were ignorant and unfounded"; (B-1) paying off all debts owed to any Scientology organizations; (B-2) complete an approved amends project; (C) training from the lowest level; (D) providing copies of the above steps to the ethics officer who is dealing with him; and (E) providing a similar copy to the International Justice Chief of the Church. "Suppressive Acts, Suppression of Scientology and Scientologists", 8 January 1981.

43. The writings of L. Ron Hubbard are very clear on the point that even an expelled person may turn around and re-enter the Church. In "Expansion Theory of Policy", 4 December 1966 regarding expulsion from the Church, he wrote:

Further, one must leave at least a crack in the door and never close it with a crash on anyone because a demand factor may still develop there. ... One must always leave a crack open. The suppressive can recant and apologize.

44. Finally, because of their adherence to a strict standard of ethics, Scientologists have a great respect for the law. As Mr. Hubbard wrote in The Way To Happiness:

"Adhere to the principal that all men are equal under law: a principal which, in its own time and place -- the tyrannical days of aristocracy -- was one of the greatest social advances in human history and should not be lost sight of.

"See the children and people become informed of what is 'legal and 'illegal' and make it known, if by as little as a frown, that you do not approve of 'illegal acts.'

"Those who commit them, even when they 'get away with them,' are yet weakened before the might of the state."

(Id., pp. 100 - 101)

45. The selections presented above are but a small portion of the hundreds of pages which Mr. Hubbard has written on the subject of Ethics and Justice, all of which is in full use and application in Churches of Scientology around the globe. As the cited materials make clear, the undeviating emphasis throughout this vast literature is that one must maintain a very high standard of ethics, that one must treat one's fellow man with dignity and respect and that one must obey the laws and act in harmony with the codes of the society. Moreover, the Scientology scriptures themselves are comprised of over 50 million words which L. Ron Hubbard wrote on the subject of the religion of Scientology. And throughout all of this material, whether dealing with techniques of counselling or with the ultimate abilities and

nature of the spiritual being that is the individual, Mr. Hubbard has written from the premise that truth, integrity, honesty and fair dealing with one's fellows, with groups and races and with each of the dynamics, is the road to survival. This is a standard which never waivers in the Church of Scientology. And this is the reason that Scientologists are the most ethical people you are likely to ever meet.

46. Seen in this context -- a context which never could be presented to Judge Breckenridge in the underlying case -- Armstrong's assertions are patently absurd and unbelievable. Armstrong attempted to take one line from a 1965 issue and to assert that this cancelled issue, which he deliberately misinterpreted to suit his own purposes, carries more weight than the thousands upon thousands of pages by Mr. Hubbard which directly and unequivocally state the exact opposite of Armstrong's interpretation. Armstrong knew that the "fair game" issue was cancelled by Mr. Hubbard in 1968, before Armstrong was first exposed to the religion of Scientology. When Mr. Hubbard learned that the line was open to misinterpretation by those not versed in Church scripture, he immediately cancelled it for that reason. The Church has always been ready to accept a reformed suppressive person back into the Church. Mr. Hubbard's writings are clear on this. The expelled individual is simply denied recourse to the Church's internal justice procedures for the resolution of his disputes with Scientologists in good standing. The door is always "left open a crack", as anyone is capable of reform. It has always been and will remain the intention of the Church

staff to bring increased well-being and spiritual awareness to all individuals on this planet. That is what the religion and the Church of Scientology are about.

47. Armstrong stands as an apostate who has found a single mistranslated line that never made it into an edition of the Bible. An apostate who, on the basis of this non-existent piece of scripture, is attempting to allege that all of Christianity is built upon a false premise and that all the teachings of Jesus and his disciples are mere coverings for the one line of alleged "scripture" which he feels "tells it all". The Court would surely recognize the absurdity of this position and would never permit the apostate to claim that his theft of sacred religious documents was warranted by his "state of mind". Yet this is an exact parallel to the situation which occurred at the Armstrong trial and which was countenanced by Judge Breckenridge and, so far, by this Court. Moreover, Armstrong well knows that it is a fundamental tenet of the Church that Church policy must be in writing to be valid ("in Scientology we say, 'if it isn't written, it isn't true.'"["The Hidden Data Line, 16 April 1965] The term "fair game" is not in the writings of the Church and is not Church policy. All valid and enforceable Church policy is published and available to parishioners. The "fair game" policy has not been published since its cancellation prior to Armstrong joining the Church and is not published in any current volumes of Scientology writings, and indeed was never published in any edition of any of the Scientology policy volumes. It is not something that is open to interpretation by Armstrong, Judge Breckenridge, or anyone else. It does not exist.

48. Now the Court has the heretofore missing data about the nature and weight of Scientology scriptures. Now the indefensible nature of Armstrong's "state of mind" defense is clear. And further, now it is clear that Armstrong's asserted defense has forced the Court into the role of interpreter of the true meaning of Scientology scriptures, a role which is anathema to the First Amendment. Church scriptures are straight-forward on this matter: Church members and Church organizations are expected to (and do) maintain the highest standards of ethical behavior in their dealings with their fellow men and with the institutions of our society.

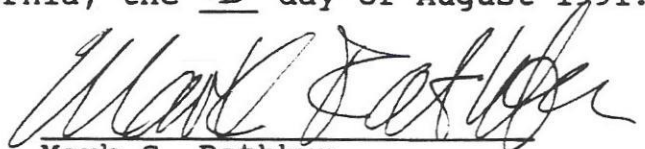
49. Mr. Hubbard cared deeply for mankind and dedicated his life and his work to doing what he could to make life better -- and happier -- for all mankind. It is this care and dedication which is carried on by Scientologists the world over, and their own happiness and that of those around them reflect just that. Mr. Hubbard expressed the purpose underlying his work in an article entitled, The Aims of Scientology:

A civilization without insanity, without criminals and without war, where the able can prosper and honest beings can have rights, and where man is free to rise to greater heights, are the aims of Scientology.

50. The truth regarding the Church of Scientology is clear. These are the true facts about the ethics and justice systems of the Church and the values which the writings of L. Ron Hubbard advance. These are tools of personal salvation which litigants against the Church violently malign and impugn. From the blackened depths of their criminal minds, they seek to destroy this hope for mankind through false pictures and wild

allegations which merely reflect their own sordid intentions and actions. Yet, as this small sampling of the scriptures show, the truth is very different. The religion of Scientology places a premium upon ethical behavior; and Scientologists, as a group, are the most ethical people in the world today. In fact, the ethical standards which they maintain are far and above those of any other group.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed in the State of California, the 13th day of August 1991.



Mark C. Rathbun